

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PORT OF TACOMA,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 885

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$250 civil penalty for an alleged airborne particulate violation; having come on regularly for a formal hearing before the Pollution Control Hearings Board on the 3d day of September, 1975, at Tacoma, Washington; and appellant Port of Tacoma appearing through its assistant chief engineer, Robert L. MacLeod, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney Keith D. McGoffin; and Board members present at the hearing being Chris Smith and Walt Woodward; and the Board having considered the sworn testimony, exhibits, records and files herein and having entered

1 on the 9th day of September, 1975, its proposed Findings of Fact,
2 Conclusions of Law and Order; and the Board having served said proposed
3 Findings, Conclusions and Order upon all parties herein by certified
4 mail, return receipt requested and twenty days having elapsed from said
5 service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 9th day of
11 September, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
13 Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 7th day of October, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

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17 CHRIS SMITH, Chairman

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19 WALT WOODWARD, Member

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Mr. Robert L. MacLeod
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Control Agency
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Seattle, Washington 98119

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

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IN THE MATTER OF
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PUGET SOUND AIR POLLUTION
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged airborne particulate violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Department of Public Utilities, Tacoma, on September 3, 1975.

Appellant was represented by Robert L. MacLeod, appellant's assistant chief engineer; respondent appeared through Keith D. McCoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 From testimony heard and exhibits examined, the Pollution
3 Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,
7 3d Ex. Sess., has filed with this Board a certified copy of its
8 Regulation I containing respondent's regulations and amendments
9 thereto.

10 II.

11 Section 9.15(a) of respondent's Regulation I makes it
12 unlawful to cause particulate matter to be handled without taking
13 reasonable precautions to prevent the matter from becoming airborne.
14 Section 3.29 authorizes respondent to levy a civil penalty of not
15 more than \$250 for any violation of Regulation I.

16 III.

17 On May 27, 1975, from the "BC-1" portion of the alumina unloading
18 belt line of appellant's facility at Pier 7, Tacoma, Pierce County,
19 alumina particulates were emitted and became airborne. The
20 emission was observed for 20 minutes by two experienced inspectors
21 on respondent's staff.

22 Appellant had a belt line maintenance crew on duty at the
23 time, but none of the crew noticed the emission. When the emission
24 was called to appellant's attention by the inspectors, appellant
25 promptly attempted to adjust devices to control the emission, but
26 this effort was not successful.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Later, appellant discovered that steel or wood debris had
2 adhered to a stainless steel wire brush whose function is to
3 clean the surface of the "BC-1" belt before it returns to the
4 alumina unloading hopper. The debris had worn a "V"-shaped
5 wedge in the brush, rendering that portion of the brush useless.

6 II.

7 As a result of the emission observation, respondent served
8 on appellant Notice of Violation No. 10449, citing Section 9.15
9 of Regulation I, and, subsequently, in connection therewith, Notice
10 of Civil Penalty No. 2096 in the sum of \$250, which is the subject
11 of this appeal.

12 III.

13 Since the incident described in Finding of Fact I, appellant
14 has been experimenting with a mold-release additive substance
15 which it believes may make the belt's surface slippery enough so
16 that alumina particles will not adhere to it even in the event
17 of a brush failure. If the additive is successful and does not
18 prove chemically harmful to the belt, appellant is prepared to
19 expend about \$200 for the purchase and application of the additive
20 prior to each unloading use of the "BC-1" unit.

21 IV.

22 Any Conclusion of Law hereinafter stated which is deemed to
23 be a Finding of Fact is adopted herewith as same.

24 From these facts, the Pollution Control Hearings Board comes
25 to these

26
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 Appellant was in violation of respondent's Regulation I as
4 cited in Notice of Violation No. 10449.

5 II.

6 Notice of Civil Penalty No. 2096 is reasonable.

7 III.

8 Little is to be gained by one taxpayer-supported unit of
9 government collecting a civil penalty from another taxpayer-supported
10 unit of government, particularly if the "guilty" unit of government
11 is making a good-faith effort and expense of funds to correct the
12 problem. The Board believes appellant is making such a constructive
13 effort in this matter; it is an effort which, if successful, probably
14 will result in appellant spending approximately the amount of this
15 one instant civil penalty each time the alumina unloading facility
16 is used. The object of the Clean Air Act is compliance, not penalties.
17 In view of this, the Board feels it should not require immediate collectio
18 of the instant penalty. Appellant, however, must not regard the
19 Board's order as anything but a brief opportunity to effectuate
20 its mold-release additive experimentation.

21 IV.

22 Any Finding of Fact herein which is deemed to be a Conclusion
23 of Law is adopted herewith as same.

24 Therefore, the Pollution Control Hearings Board makes this

25 ORDER

26 The appeal is denied, Notice of Civil Penalty No. 2096 in the
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 4

1 sum of \$250 is sustained, but payment of same is suspended pending
2 no similar violation for a period of six months from the date this
3 order becomes final.

4 DONE at Lacey, Washington, this 9th day of September, 1975.

5 POLLUTION CONTROL HEARINGS BOARD

6
7 Chris Smith
8 CHRIS SMITH, Chairman

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10 Walt Woodward
11 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER